



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 4

Robert Buyan
Stout, Uxa, Buyan & Mullins, LLP
4 Venture, Suite 300
Irvine, CA 92618

COPY MAILED

AUG 02 2002

OFFICE OF PETITIONS

In re Application of

Chai

Application No. 10/092,852

Filed: March 5, 2002

Attorney Docket No. WNPLS-002A

DECISION ON PETITION

This is a decision on the petition filed June 10, 2002, requesting, in effect, that Figures 13 and 14 filed on June 10, 2002, be entered as part of the original disclosure.

The petition is **dismissed**.

The application was filed on March 5, 2002. On April 9, 2002, the Office of Initial Patent Examination mailed a Notice stating that the application had been accorded a filing date of March 5, 2002, and advising applicant that Figures 13 and 14 appeared to have been omitted.

In response, the present petition was filed. Petitioner alleges Figures 13 and 14 were filed with the original application.

All the evidence present in the file has been carefully considered, but is not persuasive that Figures 13 and 14 were submitted with the original application.

The last portion of MPEP 513 states,

Where there is a dispute as to the contents of correspondence submitted to the Office (e.g., an applicant asserts that three sheets of drawings were submitted under 37 CFR 1.10 with an application, but the Office records indicate receipt of only two sheets of drawings with the application) ... The Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g. a postcard receipt

While petitioner apparently believes that Figures 13 and 14 were filed on April 9, 2002, the file of application No. 10/092,852¹ shows that Figures 13 and 14 were not received, since no such papers are present in the file. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. In this regard, declarations by individuals involved in the preparation and filing of the original application reciting their personal recollection or belief of what was contained in the application that they reviewed are generally not more persuasive of what was actually filed in the USPTO than the contents of the application file. Such declarations are usually made weeks or months after the actual events recited. In this case, the declaration filed June 10, 2002, was made approximately three months after the application was filed. The declaration does not have more probative value than the official government record of what was actual received in the USPTO on March 5, 2002.

¹ The file contains the actual papers received and the file is an official government record prepared and maintained by disinterested USPTO employees as a part of their customary and usual duties.

It is for this reason that the USPTO has established a practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice, which has been in existence for many years and is well publicized, requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

Petitioner has only demonstrated an intent to file Figures 13 and 14 and has not established that Figures 13 and 14 drawings were actually filed. Unfortunately, patent applicants and their representatives, who intend to file complete applications, occasionally file applications which are missing one or more pages, due to clerical error, a copying machine error (such as papers sticking together), papers falling out of a file, or another reason. A demonstration of an intent to include a page or pages does not establish the actual receipt of such pages by the Office.

Since applicants have not filed a petition under 37 CFR 1.182 requesting June 10, 2002, the date the missing pages were filed, as the filing date, **Figures 13 and 14 filed on June 10, 2002, will not be entered.**

An amendment to the specification deleting references to the missing pages should be filed prior to the first USPTO action in order to avoid further delays in the examination of the application. In the alternative, if petitioner desires for the examiner to consider pages which were not submitted as part of the original disclosure, then petitioner may seek to submit some or all of those pages as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a).

Further correspondence with respect to this matter should be addressed as follows:

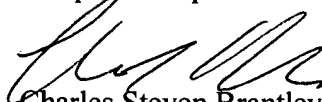
By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

If a request of reconsideration, or petition under 37 CFR 1.182, is not filed within two months, the file will be returned to the Office of Initial Patent Examination for further processing with a filing date of March 5, 2002, using only the papers filed on that date. The file will be also be returned to the Office of Initial Patent Examination for consideration of the formal drawings filed on June 10, 2002, except for page 7 containing Figures 13 and 14 which will not be entered.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.


Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy